

IC 4-4-11

Chapter 11. Indiana Development Finance Authority

IC 4-4-11-1

Title

Sec. 1. This chapter may be cited as "The Indiana development finance authority law".

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.16.

IC 4-4-11-2

Legislative findings of fact; purpose

Sec. 2. (a) The legislature makes the following findings of fact:

- (1) That there currently exists in certain areas of the state critical conditions of unemployment or environmental pollution, including water pollution, air pollution, sewage and solid waste, radioactive waste, thermal pollution, radiation contamination, and noise pollution, and that these conditions may well exist, from time to time, in other areas of the state.
- (2) That in some areas of the state such conditions are chronic and of long standing and that without remedial measures they may become so in other areas of the state.
- (3) That economic insecurity due to unemployment or environmental pollution is a menace to the health, safety, morals, and general welfare of not only the people of the affected areas but of the people of the entire state.
- (4) That involuntary unemployment and its resulting burden of indigency falls with crushing force upon the unemployed worker and ultimately upon the state in the form of public assistance and unemployment compensation.
- (5) That security against unemployment and the resulting spread of indigency and economic stagnation in the areas affected can best be provided by:
 - (A) the promotion, attraction, stimulation, rehabilitation, and revitalization of industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products;
 - (B) the promotion and stimulation of international exports; and
 - (C) the education, both formal and informal, of people of all ages throughout the state by the promotion, attraction, construction, renovation, rehabilitation, and revitalization of and assistance to educational facility projects.
- (6) That the present and prospective health, safety, morals, right to gainful employment, and general welfare of the people of the state require as a public purpose the abatement or control of pollution, the promotion of increased educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) for people of all ages through new, expanded, or

revitalized educational facility projects or through assisting educational facility projects, and the promotion of employment creation or retention through development of new and expanded industrial development projects, rural development projects, mining operations, and agricultural operations that involve the processing of agricultural products.

(7) That there is a need to stimulate a larger flow of private investment funds from commercial banks, investment bankers, insurance companies, other financial institutions, and individuals into such industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products in the state.

(8) That the authority can encourage the making of loans or leases for creation or expansion of industrial development projects, rural development projects, mining operations, international exports, and agricultural operations that involve the processing of agricultural products, thus putting a larger portion of the private capital available in Indiana for investment to use in the general economic development of the state.

(9) That the issuance of bonds of the authority to create a financing pool for industrial development projects promoting a substantial likelihood of opportunities for:

- (A) gainful employment;
- (B) business opportunities;
- (C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);
- (D) the abatement, reduction, or prevention of pollution;
- (E) the removal or treatment of any substances in materials being processed that otherwise would cause pollution when used; or
- (F) increased options for and availability of child care;

will improve the health, safety, morals, and general welfare of the people of the state and constitutes a public purpose for which the authority shall exist and operate.

(10) That the issuance of bonds of the authority to create a funding source for the making of guaranteed participating loans will promote and encourage an expanding international exports market and international exports sales and will promote the general welfare of all of the people of Indiana by assisting Indiana businesses through stimulation of the expansion of international exports sales for Indiana products and services, especially those of small and medium-sized businesses, by providing financial assistance through the authority.

(b) The Indiana development finance authority shall exist and operate for the public purposes of:

- (1) promoting opportunities for gainful employment and business opportunities by the promotion and development of industrial development projects, rural development projects, mining operations, international exports, and agricultural

operations that involve the processing of agricultural products, in any areas of the state;

(2) promoting the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of all the people of the state by the promotion, development, and assistance of educational facility projects;

(3) promoting affordable farm credit and agricultural loan financing at interest rates that are consistent with the needs of borrowers for farming and agricultural enterprises;

(4) preventing and remediating environmental pollution, including water pollution, air pollution, sewage and solid waste disposal, radioactive waste, thermal pollution, radiation contamination, and noise pollution affecting the health and well being of the people of the state by the promotion and development of industrial development projects; and

(5) promoting affordable and accessible child care for the people of the state by the promotion and development of child care facilities.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1983, SEC.1; P.L.20-1985, SEC.2; P.L.25-1987, SEC.4; P.L.20-1988, SEC.7; P.L.11-1990, SEC.17; P.L.24-1995, SEC.9; P.L.227-1999, SEC.6 and P.L.273-1999, SEC.195; P.L.4-2002, SEC.2.

Repealed

(Repealed by P.L.20-1985, SEC.18(b).)

IC 4-4-11-4

Creation; membership

Sec. 4. (a) There is created a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions, to be known as the Indiana development finance authority.

(b) The authority shall be composed of the following nine (9) members:

(1) The lieutenant governor, or the lieutenant governor's designee.

(2) The treasurer of state, or the treasurer of state's designee.

(3) Seven (7) members appointed by the governor, no more than four (4) of whom may be from the same political party.

(c) All members shall be residents of the state.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.18.

IC 4-4-11-5

Members; terms of office

Sec. 5. All appointments to the authority shall be for terms of four (4) years. Each member shall hold office for the term of this appointment and shall continue to serve after expiration of his appointment until his successor is appointed and qualified. Any member shall be eligible for reappointment. Any member may be removed from office by the governor and serves at his pleasure.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.19.

IC 4-4-11-6

Officers; compensation of members

Sec. 6. (a) The governor shall name the chairman from among the members to serve as chairman at the pleasure of the governor. The members shall elect from among their number a vice chairman and other officers as they may determine.

(b) The members of the authority appointed by the governor under section 4(b)(3) of this chapter are entitled to a per diem allowance for attending meetings equal to that provided by law for members of the general assembly. All the members of the authority shall receive reimbursement for actual and necessary expenses on the same basis as state employees.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.20-1985, SEC.3; P.L.11-1990, SEC.20.

IC 4-4-11-7

Vesting of powers; quorum; voting

Sec. 7. The powers of the authority are vested in the members. Five (5) members of the authority constitute a quorum for the transaction of business. The affirmative vote of at least five (5) members is necessary for any action to be taken by the authority. Members may vote by written proxy delivered in advance to any other member who is present at the meeting. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.21.

IC 4-4-11-8

Meetings

Sec. 8. Meetings of the members of the authority shall be held at the call of the chairman or whenever any three (3) members so request. In any event, the members shall meet at least once every three (3) months to attend to the business of the authority.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.22.

IC 4-4-11-9

Secretary-manager; service by lieutenant governor; powers and duties

Sec. 9. The lieutenant governor shall serve as the secretary-manager of the authority. The secretary-manager shall administer, manage, and direct the affairs and activities of the authority in accordance with the policies and under the control and direction of the members. The secretary-manager shall approve all accounts for salaries, allowable expenses of the authority or of any employee or consultant, and expenses incidental to the operation of

the authority. The secretary-manager shall perform other duties as may be directed by the members in carrying out the purposes of this chapter, IC 4-4-21, and IC 15-7-5.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.23; P.L.24-1995, SEC.10.

IC 4-4-11-10

Secretary-manager; attendance; record keeping duties; certification of copies

Sec. 10. The secretary-manager shall attend the meetings of the members of the authority, shall keep a record of the proceedings of the authority, and shall maintain and be custodian of all books, documents, and papers filed with the authority and its official seal. The secretary-manager may make copies of all minutes and other records and documents of the authority and may give certificates under seal of the authority to the effect that the copies are true copies. All persons dealing with the authority may rely upon such certificates.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.24.

IC 4-4-11-11

Officers, agents, and employees; appointment; administrative duties

Sec. 11. The authority may, without the approval of the attorney general or any other state officer, employ bond counsel, other legal counsel, technical experts, and such other officers, agents, and employees, permanent or temporary, as it considers necessary to carry out the efficient operation of the authority, and shall determine their qualifications, duties, compensation, and terms of service. The members may delegate to the secretary-manager or one (1) or more agents or employees of the authority such administrative duties as they consider proper, including the powers of the authority set forth in this section. Employees of the authority shall not be considered employees of the state.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.25; P.L.18-1992, SEC.2.

IC 4-4-11-12

Members; conflicts of interest; disclosure

Sec. 12. Any member or employee of the authority who has, will have, or later acquires an interest, direct or indirect, in any transaction with the authority shall immediately disclose the nature and extent of the interest in writing to the authority as soon as he has knowledge of the actual or prospective interest. The disclosure shall be announced in open meeting and entered upon the minutes of the authority. Upon disclosure, the member or employee shall not participate in any action by the authority authorizing the transaction. However, such an interest shall not invalidate actions by the authority with the participation of the disclosing member prior to the

time when the member became aware of the interest or should reasonably have become aware of the interest.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.26.

IC 4-4-11-13

State officers and employees; nonforfeiture of offices and employment

Sec. 13. Notwithstanding the provisions of any other law, no officer or employee of the state forfeits his office or employment by reason of his acceptance of membership in the authority or by reason of his providing services to the authority.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.27.

IC 4-4-11-14

Members; surety bonds

Sec. 14. Before:

- (1) the issuance of any bonds or guaranteed participating loans under this chapter, IC 4-4-21, or IC 15-7-5; or
- (2) the providing of any performance bond guarantees under IC 4-4-21;

each member of the authority shall execute a surety bond in the penal sum of twenty-five thousand dollars (\$25,000). To the extent any member of the authority is already covered by a bond required by state law, the member need not obtain another bond so long as the bond required by state law is in at least the penal sum specified in this section and covers the member's activities for the authority. In lieu of a bond, the chairman of the authority may execute a blanket surety bond covering each member and the employees or other officers of the authority. Each surety bond shall be conditioned upon the faithful performance of the duties of the office of the member and shall be issued by a surety company authorized to transact business in this state as surety. At all times after the issuance of any surety bonds, each member shall maintain the surety bonds in full force and effect. All costs of the surety bonds shall be borne by the authority.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.28; P.L.24-1995, SEC.11.

IC 4-4-11-15

Powers

Sec. 15. (a) The authority is granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes under this chapter, IC 4-4-21, and IC 15-7-5, including but not limited to the following:

- (1) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions.
- (2) Without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with this

chapter, IC 4-4-21, and IC 15-7-5 and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the authority and conduct its business.

(3) Sue and be sued in its own name.

(4) Have an official seal and alter it at will.

(5) Maintain an office or offices at a place or places within the state as it may designate.

(6) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter, IC 4-4-21, and IC 15-7-5.

(7) Employ architects, engineers, attorneys, inspectors, accountants, agriculture experts, silviculture experts, aquaculture experts, and financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation.

(8) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.

(9) Borrow money, make guaranties, issue bonds, and otherwise incur indebtedness for any of the authority's purposes, and issue debentures, notes, or other evidences of indebtedness, whether secured or unsecured, to any person, as provided by this chapter, IC 4-4-21, and IC 15-7-5.

(10) Procure insurance or guaranties from any public or private entities, including any department, agency, or instrumentality of the United States, for payment of any bonds issued by the authority or for reinsurance on amounts paid from the industrial development project guaranty fund, including the power to pay premiums on any insurance or reinsurance.

(11) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, and accept, from any source, aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this chapter, IC 4-4-21, and IC 15-7-5, subject to the conditions upon which the grants or contributions are made, including but not limited to gifts or grants from any department, agency, or instrumentality of the United States, and lease or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, for any purpose consistent with this chapter, IC 4-4-21, or IC 15-7-5.

(12) Enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders and enter into loan agreements, sales contracts, and leases with contracting parties, including borrowers, lenders, developers, or users, for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise (as defined in IC 15-7-4.9-2), rural development project (as defined in IC 15-7-4.9-19.5), industrial

development project, or international exports, and distribute data and information concerning the encouragement and improvement of agricultural enterprises and agricultural employment, rural development projects, industrial development projects, international exports, and other types of employment in the state undertaken with the assistance of the authority under this chapter.

(13) Enter into contracts or agreements with lenders and lessors for the servicing and processing of loans and leases pursuant to this chapter, IC 4-4-21, and IC 15-7-5.

(14) Provide technical assistance to local public bodies and to profit and nonprofit entities in the development or operation of agricultural enterprises, rural development projects, and industrial development projects.

(15) To the extent permitted under its contract with the holders of the bonds of the authority, consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party.

(16) To the extent permitted under its contract with the holders of bonds of the authority, enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise, rural development project, or industrial development project being financed.

(17) Invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States, obligations issued by agencies of the United States, obligations of this state, or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to IC 5-13, or any obligations or securities which are permitted investments for bond proceeds or any construction, debt service, or reserve funds secured under the trust indenture or resolution pursuant to which bonds are issued.

(18) Collect fees and charges, as the authority determines to be reasonable, in connection with its loans, guarantees, advances, insurance, commitments, and servicing.

(19) Cooperate and exchange services, personnel, and information with any federal, state, or local government agency, or instrumentality of the United States or this state.

(20) Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority.

(21) Enter into agreements concerning, and acquire, hold, and

dispose by any lawful means, land or interests in land, building improvements, structures, personal property, franchises, patents, accounts receivable, loans, assignments, guarantees, and insurance needed for the purposes of this chapter, IC 4-4-21, or IC 15-7-5.

(22) Take assignments of accounts receivable, loans, guarantees, insurance, notes, mortgages, security agreements securing notes, and other forms of security, attach, seize, or take title by foreclosure or conveyance to any industrial development project when a guaranteed loan thereon is clearly in default and when in the opinion of the authority such acquisition is necessary to safeguard the industrial development project guaranty fund, and sell, or on a temporary basis, lease, or rent such industrial development project for any use.

(23) Expend money, as the authority considers appropriate, from the industrial development project guaranty fund created by section 16 of this chapter.

(24) Purchase, lease as lessee, construct, remodel, rebuild, enlarge, or substantially improve industrial development projects, including land, machinery, equipment, or any combination thereof.

(25) Lease industrial development projects to users or developers, with or without an option to purchase.

(26) Sell industrial development projects to users or developers, for consideration to be paid in installments or otherwise.

(27) Make direct loans from the proceeds of the bonds to users or developers for:

(A) the cost of acquisition, construction, or installation of industrial development projects, including land, machinery, equipment, or any combination thereof; or

(B) eligible expenditures for an educational facility project described in IC 4-4-10.9-6.2(a)(2);

with the loans to be secured by the pledge of one (1) or more bonds, notes, warrants, or other secured or unsecured debt obligations of the users or developers.

(28) Lend or deposit the proceeds of bonds to or with a lender for the purpose of furnishing funds to such lender to be used for making a loan to a developer or user for the financing of industrial development projects under this chapter.

(29) Enter into agreements with users or developers to allow the users or developers, directly or as agents for the authority, to wholly or partially construct industrial development projects to be leased from or to be acquired by the authority.

(30) Establish reserves from the proceeds of the sale of bonds, other funds, or both, in the amount determined to be necessary by the authority to secure the payment of the principal and interest on the bonds.

(31) Adopt rules governing its activities authorized under this chapter, IC 4-4-21, and IC 15-7-5.

(32) Use the proceeds of bonds to make guaranteed

participating loans.

(33) Purchase, discount, sell, and negotiate, with or without guaranty, notes and other evidences of indebtedness.

(34) Sell and guarantee securities.

(35) Make guaranteed participating loans under IC 4-4-21-26.

(36) Procure insurance to guarantee, insure, coinsure, and reinsure against political and commercial risk of loss, and any other insurance the authority considers necessary, including insurance to secure the payment of principal and interest on notes or other obligations of the authority.

(37) Provide performance bond guarantees to support eligible export loan transactions, subject to the terms of this chapter or IC 4-4-21.

(38) Provide financial counseling services to Indiana exporters.

(39) Accept gifts, grants, or loans from, and enter into contracts or other transactions with, any federal or state agency, municipality, private organization, or other source.

(40) Sell, convey, lease, exchange, transfer, or otherwise dispose of property or any interest in property, wherever the property is located.

(41) Cooperate with other public and private organizations to promote export trade activities in Indiana.

(42) Make guarantees and administer the agricultural loan and rural development project guarantee fund established by IC 15-7-5.

(43) Take assignments of notes and mortgages and security agreements securing notes and other forms of security, and attach, seize, or take title by foreclosure or conveyance to any agricultural enterprise or rural development project when a guaranteed loan to the enterprise or rural development project is clearly in default and when in the opinion of the authority the acquisition is necessary to safeguard the agricultural loan and rural development project guarantee fund, and sell, or on a temporary basis, lease or rent the agricultural enterprise or rural development project for any use.

(44) Expend money, as the authority considers appropriate, from the agricultural loan and rural development project guarantee fund created by IC 15-7-5-19.5.

(45) Reimburse from bond proceeds expenditures for industrial development projects under this chapter.

(46) Do any act necessary or convenient to the exercise of the powers granted by this chapter, IC 4-4-21, or IC 15-7-5, or reasonably implied from those statutes, including but not limited to compliance with requirements of federal law imposed from time to time for the issuance of bonds.

(b) The authority's powers under this chapter shall be interpreted broadly to effectuate the purposes of this chapter and may not be construed as a limitation of powers.

(c) This chapter does not authorize the financing of industrial development projects for a developer unless any written agreement

that may exist between the developer and the user at the time of the bond resolution is fully disclosed to and approved by the authority. *As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1983, SEC.3; P.L.20-1985, SEC.4; P.L.2-1987, SEC.2; P.L.25-1987, SEC.5; P.L.20-1988, SEC.8; P.L.11-1990, SEC.29; P.L.24-1995, SEC.12; P.L.4-2002, SEC.3.*

IC 4-4-11-15.1

Code of ethics

Sec. 15.1. (a) The authority shall:

(1) adopt:

(A) rules under IC 4-22-2; or

(B) a policy;

establishing a code of ethics for its employees; or

(2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted by rule or policy under this section must be consistent with state law and approved by the governor.

As added by P.L.5-1996, SEC.2.

IC 4-4-11-15.2

Guaranteed participating loans; export loans required to be sold; bond issuance

Sec. 15.2. (a) Before using the proceeds of bonds to make a guaranteed participating loan, the authority shall require the financial institution to which the authority makes the guaranteed participating loan to make eligible export loans and sell them to the authority within a reasonable period of time.

(b) Issuance of bonds by the authority to fund the program of the authority under IC 4-4-21 is subject to the general provisions for the issuance of bonds set forth in this chapter, except for the requirements for the issuance of bonds under sections 17 and 17.5 of this chapter.

As added by P.L.20-1988, SEC.9. Amended by P.L.11-1990, SEC.30.

IC 4-4-11-15.5

Public offering for sale or lease of property or interests acquired for an industrial development project

Sec. 15.5. (a) In addition to the powers enumerated in section 15(a) of this chapter, the authority may, in lieu of a private sale or leasing as authorized by section 15(a) of this chapter or a financing of an industrial development project under section 17 of this chapter, decide to hold a public offering under this section for the sale or leasing of any land or interests in land, building improvements, structures, personal property, and franchises and patents acquired by the authority under this chapter for an industrial development project. If the authority decides to hold a public offering for the sale or leasing of any property or interests acquired for an industrial development project, the offering shall be made in accordance with this section.

(b) Before offering for sale or lease to the public any property or interests acquired for an industrial development project under this section, the authority shall prepare an offering sheet showing the property or interests to be offered and copies of the offering sheets shall be furnished to prospective buyers or lessees. Maps and plats of the property and any additional information considered appropriate by the authority shall also be kept available for inspection at the office of the authority.

(c) The authority shall publish a notice of the offering in accordance with IC 5-3-1. The notice must state that at a designated time the authority will open and consider written offers for the purchase or lease of the property or interests being offered. In giving the notice, it is not necessary to describe specifically the property or interests or to specify the exact terms of the disposition, but the notice must state the general location of the property or interests and call attention generally to any requirements or limitations that the authority may establish in respect to the industrial development project.

(d) At the time fixed in the notice, the authority shall open and consider any offers received. All offers received shall be opened at public meetings of the authority and shall be kept open for public inspection.

(e) The authority may reject any or all bids or may make awards to the highest and best bidder or bidders. In determining the highest and best bids, the authority may take into consideration the following:

- (1) The size and character of the improvements for the industrial development project as proposed by the bidder to be made on the property and the terms and conditions of the consideration offered by the bidder.
- (2) The bidder's plans and ability to carry out the industrial development project with reasonable promptness.
- (3) Whether the property and interests to be acquired by the bidder will be leased or released for the industrial development project.
- (4) The nature and extent of any obligations to be undertaken by the authority in conjunction with the improvement of the property or interests to be acquired for the industrial development project as proposed by the bidder.
- (5) The potential impact of the bidder's proposal on the creation of new employment or the retention of existing employment resulting from the industrial development project.
- (6) The potential impact of the bidder's proposal to attract or establish a major new business enterprise or to retain or expand a significant existing business enterprise that will provide or preserve gainful employment for the citizens of the state.
- (7) The economic benefits to the state and its citizens that will result from the industrial development project, as proposed by the bidder, including the dollar volume of new or preserved wages and salaries, increases in or preservation of state and

local government tax revenues, the incremental economic benefits to the citizens of the state, the state, and local governmental units potentially resulting from the industrial development project as proposed by the bidder, and any other direct or indirect economic benefit to the state and its citizens resulting from the industrial development project as proposed by the bidder.

(8) The potential impact and benefit to the state and its citizens of the industrial development project as proposed by the bidder from the standpoint of both human and economic welfare.

(f) In making an award to the highest and best bidder as provided in subsection (e), the authority shall determine whether in its judgment the potential benefits to the state and its citizens of the industrial development project as proposed by the bidder exceed the direct costs to the authority of acquiring the property and interests being offered for sale or lease for the industrial development project less any sums to be paid by the successful bidder pursuant to its bid. The authority's judgment concerning this determination shall be based on the economic studies, analyses, and projections that the authority determines are reasonably necessary. The authority's determination is final and conclusive.

(g) The authority may contract with a bidder concerning any of the factors listed in subsection (e), and the contract may provide for the deposit of surety bonds, the making of good faith deposits, liquidated damages, the right of reversion or repurchase, or other rights and remedies if the bidder fails to comply with the contract.

(h) After the opening, consideration, and determination of the written offers filed in response to the notice, the authority may dispose of all or part of the remaining available property or interests for any approved use, either at public sale or by private negotiation carried on by the authority, its regular employees, or real estate experts employed for that purpose. For a period of thirty (30) days after the opening of the written offers and determination on them, no sale, exchange, or lease may be made on terms less than that shown on the offering sheet, but after that period the authority may adjust the offering terms it considers necessary to further the industrial development project.

(i) An action to contest the validity of any sale or lease awarded and approved by the authority under this section may not be commenced more than thirty (30) days following the authority's adoption of a resolution designating the successful bidder or bidders and stating and approving the basic terms and conditions of the sale or lease.

As added by P.L. 24-1987, SEC.4. Amended by P.L. 11-1990, SEC.31.

IC 4-4-11-16

Industrial development project guaranty fund; program; loans of working capital

Sec. 16. (a) There is created an industrial development project guaranty fund which shall be used by the authority as a nonlapsing,

revolving fund for carrying out the provisions of the guaranty program. The industrial development project guaranty fund shall consist of such money as may be appropriated by the general assembly. To this sum shall be charged those expenses of the authority attributable and allocated by the authority to the authority's guaranty program, including interest, principal, and lease payments required by loan or lease defaults under the authority's guaranty program, and to the sum shall be credited that income of the authority attributable and allocated by the authority to the authority's guaranty program, including guarantee premiums.

(b) If the authority makes a written finding that the guarantee of a particular loan secured by, or lease of, real property or tangible or intangible personal property to or for the benefit of any industrial development project, mining operation, or agricultural operation that involves the processing of agricultural products would tend to accomplish the purposes of this chapter, including the creation or retention of employment in Indiana through the guarantee of the loan or lease, and if the authority shall further find that the proposed borrower or lessee cannot obtain the loan or lease upon reasonable terms, the authority may, under its guaranty program, guarantee the loan or lease upon such terms and conditions as the authority may prescribe. No new or additional guarantee of a loan or lease under this subsection or subsection (c) or (h) may be entered into if the guarantee would cause the outstanding aggregate guarantee obligations with respect to all loans and leases guaranteed under this subsection and subsections (c) and (h) to exceed eight (8) times the amount of money in the industrial development project guaranty fund. The amount of all guarantees by the authority of loans or leases to or for the benefit of any single industrial development project, mining operation, or agricultural operation that involves the processing of agricultural products shall not exceed two million dollars (\$2,000,000), less the outstanding aggregate principal balance under any loans made and owed to the authority under subsection (h) to or for the benefit of the project or operation. A guarantee of either a loan secured by real estate or a real estate lease shall not exceed ninety percent (90%) of the unpaid principal balance of the loan from time to time outstanding or ninety percent (90%) of the amount of any lease payment, as applicable, or ninety percent (90%) of the appraised fair market value of the real estate, whichever is less. A guarantee of a loan secured by personal property or of a personal property lease shall not exceed seventy-five percent (75%) of the unpaid principal balance of the loan from time to time outstanding or seventy-five percent (75%) of the amount of any lease payment, as applicable, or seventy-five percent (75%) of the fair market value of the personal property, whichever is less. A guarantee involving both real estate and personal property may not exceed the percentage proportionate to each type of property. To be eligible for a guarantee under this section, a loan or lease must:

(1) be one which is to be made to and held by a lender or lessor approved by the authority as responsible and able to service the

loan or lease properly;

(2) involve a principal obligation or lease payments, as applicable, which may include initial service charges and appraisal, inspection, and other fees approved by the authority;

(3) have a maturity or term satisfactory to the authority but in no case later than twenty (20) years from the date of the guaranty;

(4) contain payment terms satisfactory to the authority requiring periodic payments by the developer or user which shall include principal and interest payments, cost of local property taxes and assessments, land lease rentals, if any, insurance on the property, as applicable, and such guarantee premiums as may be fixed by the authority; and

(5) contain such terms and provisions with respect to property insurance, repairs, alterations, payment of taxes and assessments, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, and other matters as the authority may prescribe.

(c) The authority may guarantee an unsecured loan for:

(1) working capital purposes, if the authority determines, under criteria that it establishes, that the loan for working capital:

(A) is for an industrial development project, a mining operation, or an agricultural operation that involves the processing of agricultural products; and

(B) will lead directly to increased production or job creation or retention through sales of products or provision of services to federal, state, or local government, private businesses, or individuals, or through exports to foreign markets; or

(2) capital expenditures, if the authority determines, under criteria that the authority establishes, that the loan is for an industrial development project described in IC 4-4-10.9-11(b)(7).

The loan guarantee may not exceed five hundred thousand dollars (\$500,000) for any single project or operation, and may be in addition to any other guarantees of the authority under this section. The guarantee terms must include a time limit for working capital loan guarantees that may not exceed eighteen (18) months. However, the guarantees are renewable. A loan guarantee may not exceed eighty percent (80%) of the unpaid principal balance from time to time outstanding of the loan being guaranteed. The authority may impose such additional terms as it considers appropriate for any particular project or operation.

(d) The authority is authorized to fix guarantee premiums for the guarantee under this section of any loan or lease outstanding at the beginning of each year or at the time the guarantee is entered into, and the authority is authorized to fix loan application, placement, origination, commitment, administrative, processing, or other fees or charges in connection with the authority's powers under subsection (h). These premiums, fees, or charges shall be payable in amounts or

based upon formulas established by the authority and may be payable, at the election of the authority, in whole or in part, in the form of cash, shares of stock, warrants for the purchase of shares of stock, or other securities, property, or rights acceptable to the authority. These premiums, fees, or charges shall be payable by the developer or user to the authority in a manner prescribed by the authority.

(e) Notwithstanding section 19(a)(1) of this chapter, any guarantee made by the authority under subsection (b), (c), or (h) may be effected or enhanced, in whole or in part, through the provision by the authority of a letter of credit or an equivalent form of credit enhancement instrument. However, the maximum principal payment obligations of the authority under the credit instrument, as the same may be effective from time to time, is the amount of the guarantee or portion of the guarantee made under subsection (b), (c), or (h), and for purposes of the limitations on the amount of guarantees under subsection (b), (c), or (h), and the term of any letter of credit may not exceed the respective terms established for guarantees or loans under subsections (b), (c), and (h).

(f) Notwithstanding the provisions of any other law, loans or leases guaranteed or made by the authority are legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, executors, trustees and other fiduciaries, and pension or retirement funds, as well as the board for depositories.

(g) To further the purposes of this chapter, and subject to this chapter, the authority may also use any part of the industrial development project guaranty fund to guarantee any bonds issued by the authority under this chapter or by any authorized issuer under IC 36-7-12. With regard to direct obligations of the authority that are also guaranteed by the authority, the authority may permit a subordination of any valid security agreement, mortgage, combinations thereof, or other appropriate documents securing the direct obligations if the authority in its discretion determines that the subordination is reasonably necessary to accomplish the objectives of the industrial development project undertaken by the authority.

(h) To further the purposes of this chapter, and in addition to the authority's other powers under this chapter, the authority may, upon a written finding as described in subsection (b), make direct loans, from money in the industrial project guaranty fund, to or for the benefit of any industrial development project, mining operation, or agricultural operation that involves the processing of agricultural products, upon the terms and conditions that the authority may prescribe. No new or additional loan may be made if the loan would cause the then outstanding aggregate guarantee obligations with respect to all loans and leases guaranteed under this subsection and subsections (b) and (c) to exceed eight (8) times the amount of money then in the industrial development project guaranty fund, or would cause the then outstanding aggregate principal balance of all loans made under this subsection and then owing to the authority to

exceed twenty percent (20%) of the amount of money then in the industrial development project guaranty fund. The principal amount of such a loan to or for the benefit of a project or operation may not exceed one million dollars (\$1,000,000), less the then outstanding aggregate guarantee obligations with respect to any loans or leases guaranteed under this subsection and subsections (b) and (c) to or for the benefit of that project or operation. With respect to any loan made under this subsection, a loan agreement with the authority must contain the following terms:

- (1) A requirement that the loan proceeds be used for specified purposes consistent with and in furtherance of the purposes of the authority under this chapter.
- (2) The term of the loan, which must not be later than twenty (20) years from the date of the loan.
- (3) The repayment schedule.
- (4) The interest rate or rates of the loan, which may include variations in the rate, but which may not be less than the amount necessary to cover all expenses of the authority in making the loan.
- (5) Any other terms and provisions that the authority requires.

In addition, a loan agreement with the authority under this subsection may also contain a requirement that the loan be insured directly or indirectly by a loan insurer or be guaranteed by a loan guarantor, and a requirement of any other type or types of security or collateral that the authority may consider to be reasonable or necessary. A loan made under this subsection may be sold by the authority, and the authority may permit other lenders to participate in a loan made under this subsection, at the time or times and upon the terms and conditions as the authority considers reasonable or necessary. A loan sold or in which other lenders participate may be guaranteed by the authority, upon terms and conditions established by the authority.

(i) All proceeds received by the authority from the disposal by sale or in some other manner of property it may have acquired in accordance with section 15 of this chapter and in connection with its guaranty program or otherwise under this section shall be credited to the industrial development project guaranty fund.

(j) Upon the issuance of a loan or a guarantee of a loan or lease, any expenses incurred by the authority in connection with the loan or guarantee or the projects or operations for which the loan or guarantee is being made shall be reimbursed to the authority by the borrower, in the case of a loan (to the extent not provided for under subsection (d)), or by the borrower, lender, lessee, or lessor, in the case of a guarantee of a loan or lease, from the proceeds of the loan or the payments under the lease or otherwise.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1983, SEC.4; P.L.20-1985, SEC.5; P.L.24-1987, SEC.5; P.L.11-1990, SEC.32; P.L.16-1991, SEC.1; P.L.15-1991, SEC.2.

IC 4-4-11-16.1

Loan guarantees for leading Indiana businesses

Sec. 16.1. (a) As used in this section and in IC 5-13-12-8.5, "leading Indiana business" means a business that:

- (1) is incorporated in Indiana and headquartered in a county having a population of more than seventy-one thousand four hundred (71,400) but less than seventy-three thousand (73,000);
- (2) is a Fortune 500 company, as of April 16, 2001, when ranked by measures of revenues, profits, assets, stockholders' equity, market value, profit, and total return to investors;
- (3) pays average wages and benefits that are not less than two hundred percent (200%) of the county average wage, calculated by the department of commerce, paid in the county in which the business is headquartered; and
- (4) is a global business participating in international markets.

The term "leading Indiana business", as used in this section and in IC 5-13-12-8.5, also includes a joint venture, partnership, or other business entity partially or wholly owned by an Indiana business described in this subsection.

(b) As used in this section and in IC 5-13-12-8.5, "loan guarantee" means the guarantee of a loan, an obligation, or other form of commercial indebtedness.

(c) In addition to the other powers of the authority under section 16 of this chapter, the authority has authority to make a loan guarantee for a leading Indiana business jointly but not severally with the board for depositories under IC 5-13-12-8.5 in an amount not to exceed thirty-five million dollars (\$35,000,000).

(d) In addition to the authority's public purposes set forth in sections 2 and 15 of this chapter, a loan guarantee made under this section for the benefit of a leading Indiana business in conjunction with an industrial development project located outside Indiana is consistent with the authority's public purposes so long as the authority makes a written finding that the loan guarantee would accomplish the purposes of the authority by enabling a leading Indiana business to carry out an industrial development project that will do any of the following:

- (1) Improve the technological capacity or productivity of the leading Indiana business.
- (2) Enhance the protection of Indiana's environment.
- (3) Permit the leading Indiana business to expand facilities, establish new facilities, or make site or infrastructure improvements in Indiana.
- (4) Permit the leading Indiana business to preserve or retain jobs in Indiana, prevent economic insecurity resulting from unemployment or environmental pollution, or otherwise preserve the health, safety, morals, and general welfare of the state or the area of the state where the leading Indiana business is headquartered.

(e) The requirements and limitations of section 16 of this chapter, including the limitations in section 16(b) of this chapter, do not apply to a loan guarantee for a leading Indiana business under this section, except that the authority's share of or liability on any joint guarantee

with the board for depositories shall not exceed two million dollars (\$2,000,000). In addition, the amount of a loan guarantee for a leading Indiana business under this section shall not be counted in determining the outstanding aggregate guaranty obligations under section 16(b) of this chapter.

(f) This section constitutes all the authority required for the authority to make a loan guarantee to a leading Indiana business. This section is in addition to, and not in limitation of, the authority's other powers heretofore or hereafter existing under this chapter to borrow money, issue bonds, and make contracts, guarantees, and loans, including leases, and use moneys in the guaranty fund.

(g) The general assembly finds that unique circumstances resulting from the globalization of the state's economy, the state's geographic location as the crossroads of America, and changes in federal environmental regulation create the need for providing a loan guarantee for leading Indiana businesses as provided in this section and in IC 5-13-12-8.5.

(h) This section expires December 31, 2002.

As added by P.L.291-2001, SEC.146. Amended by P.L.170-2002, SEC.9.

IC 4-4-11-16.3

Transfer of funds

Sec. 16.3. To further the purposes of this chapter, and in addition to the authority's other powers under this chapter, the authority may transfer funds from the industrial development guaranty project fund to the capital access account established by IC 4-4-26-37.

As added by P.L.18-1992, SEC.3.

IC 4-4-11-16.5

Business development loan fund; loan criteria and requirements

Sec. 16.5. (a) There is created the business development loan fund that shall be used by the authority as a nonlapsing, revolving fund. The business development loan fund consists of the following:

- (1) Money appropriated by the general assembly.
- (2) The repayment proceeds of loans made to businesses from the fund.
- (3) Money received from any other source.

(b) Subject to subsection (c), the authority may make a loan from the business development loan fund to a business located in Indiana if the authority makes a written finding that the loan would accomplish the purposes of this chapter by enabling the business to carry out an industrial development project that will do any of the following:

- (1) Improve the technological capacity or productivity of the business.
- (2) Enhance the protection of Indiana's environment.
- (3) Permit the business to expand facilities, establish new facilities, or make site improvements or infrastructure improvements.

(c) With respect to any loan made under this section, a loan agreement with the authority must contain the following terms:

- (1) A requirement that the loan proceeds be used for specified purposes consistent with and in furtherance of the purposes of the authority under this chapter.
- (2) The term of the loan, which must not be later than fifteen (15) years from the date of the loan.
- (3) The repayment schedule.
- (4) The interest rate or rates of the loan, which may include variations in the rate, but that may not be less than the amount necessary to cover all expenses of the authority in making the loan.
- (5) Any other terms and provisions that the authority requires.

As added by P.L.16-1991, SEC.2.

IC 4-4-11-17

Industrial development projects; financing; procedure; approval

Sec. 17. (a) The authority may enter into negotiations with one (1) or more persons concerning the terms and conditions of financing agreements for industrial development projects. The authority shall consider whether a proposed industrial development project may have an adverse competitive effect on similar industrial development projects already constructed or operating in the local governmental unit where the industrial development project will be located. Preliminary expenses in connection with negotiations under this section may be paid from:

- (1) money furnished by the proposed user or developer;
 - (2) money made available by the state or federal government, or by any of their departments or agencies; or
 - (3) money of the authority, exclusive of the industrial development project guaranty fund.
- (b) The authority shall prepare a report that:
- (1) briefly describes the proposed industrial development project;
 - (2) estimates the number and expense of public works or services that would be made necessary or desirable by the proposed industrial development project, including public ways, schools, water, sewers, street lights, and fire protection;
 - (3) estimates the total costs of the proposed industrial development project;
 - (4) for an industrial development project that is not exclusively either a pollution control facility or an educational facility project, estimates the number of jobs and the payroll to be created or saved by the project;
 - (5) for pollution control facilities, describes the facilities and how they will abate, reduce, or prevent pollution;
 - (6) for educational facility projects, describes how the project promotes the educational enrichment (including cultural, intellectual, scientific, or artistic opportunities) of the people of the state; and

(7) for child care facility projects, describes the facilities and how the facilities promote accessibility to and increased options for child care for the people of the state.

The report shall be submitted to the executive director or chairman of the plan commission, if any, having jurisdiction over the industrial development project and, if the number of new jobs estimated exceeds one hundred (100), to the superintendent of the school corporation where the industrial development project will be located. The executive director or chairman of the plan commission and the school superintendent may formulate their written comments concerning the report and transmit their comments, if any, to the authority within five (5) days from the receipt of the report.

(c) The authority shall hold a public hearing, which may be conducted by the authority, or any officer, member, or agent designated thereby, on the proposed financing agreement for the industrial development project, after giving notice by publication in one (1) newspaper of general circulation in the city, town, or county where the industrial development project is to be located at least ten (10) days in advance of this public hearing.

(d) If the authority finds that the industrial development project will be of benefit to the health, safety, morals, and general welfare of the area where the industrial development project is to be located, and complies with the purposes and provisions of this chapter, it may by resolution approve the proposed financing agreement. This resolution may also authorize the issuance of bonds payable solely from revenues and receipts derived from the financing agreement or from payments made under an agreement to guarantee obligations of the developer, a user, a related person, or the authority by a developer, a user, a related person thereto, or the authority pursuant to the industrial development project guaranty fund. The bonds are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(e) A financing agreement approved under this section must provide for payments in an amount sufficient to pay the principal of, premium, if any, and interest on the bonds authorized for the financing of the industrial development project. However, interest payments for the anticipated construction period, plus a period of not more than one (1) year, may be funded in the bond issue. The term of a financing agreement may not exceed fifty (50) years from the date of any bonds issued under the financing agreement. However, a financing agreement does not terminate after fifty (50) years if a default under that financing agreement remains uncured, unless the termination is authorized by the terms of the financing agreement. If the authority retains an interest in the industrial development project, the financing agreement must require the user or the developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the industrial development projects, so that the authority will not incur any expenses on account of the industrial development projects other than those that are covered by the payments provided for in the

financing agreement.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.20-1985, SEC.6; P.L.24-1987, SEC.6; P.L.11-1990, SEC.33; P.L.24-1995, SEC.13; P.L.227-1999, SEC.7 and P.L.273-1999, SEC.196; P.L.4-2002, SEC.4.

IC 4-4-11-17.5

Industrial development project financing; bond issuance

Sec. 17.5. (a) In addition to all other authority granted to the authority under this chapter, including the authority to borrow money and to issue bonds to finance directly or indirectly the acquisition or development of industrial development projects undertaken or initiated by the authority, the authority may initiate programs for financing industrial development projects for developers and users in Indiana through the issuance of bonds under this chapter. In furtherance of this objective, the authority may do any of the following:

- (1) Establish eligibility standards for developers and users, without complying with IC 4-22-2. However, these standards have the force of law if the standards are adopted after a public hearing for which notice has been given by publication under IC 5-3-1.
- (2) Contract with any entity securing the payment of bonds issued under this chapter and authorizing the entity to approve the developers and users that can finance or refinance industrial development projects with proceeds from the bond issue secured by that entity.
- (3) Lease to a developer or user industrial development projects upon terms and conditions that the authority considers proper and, with respect to the lease:
 - (A) charge and collect rents;
 - (B) terminate the lease upon the failure of the lessee to comply with any of its obligations under the lease or otherwise as the lease provides; and
 - (C) include in the lease provisions that the lessee has the option to renew the term of the lease for such periods and at such rents as may be determined by the authority or to purchase any or all of the industrial development projects to which the lease applies.
- (4) Lend money, upon such terms and conditions as the authority considers proper, to a developer or user under an installment purchase contract or loan agreement to:
 - (A) finance, reimburse, or refinance the cost of an industrial development project; and
 - (B) take back a secured or unsecured promissory note evidencing such a loan or a security interest in the industrial development project financed or refinanced with the loan.
- (5) Sell or otherwise dispose of any unneeded or obsolete industrial development project under terms and conditions determined by the authority.

- (6) Maintain, repair, replace, and otherwise improve or cause to be maintained, repaired, replaced, and otherwise improved any industrial development project owned by the authority.
- (7) Require any type of security that the authority considers reasonable and necessary.
- (8) Obtain or aid in obtaining property insurance on all industrial development projects owned or financed, or accept payment if any industrial development project property is damaged or destroyed.
- (9) Enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, letter of credit, or other form of credit enhancement, accepting payment in such manner and form as provided in the instrument if a developer or user defaults, and assign any such insurance, guarantee, letter of credit, or other form of credit enhancement as security for bonds issued by the authority.
- (10) Finance for eligible developers and users in connection with their industrial development projects:
 - (A) the cost of their industrial development projects; and
 - (B) in the case of a program funded from the proceeds of taxable bonds, working capital associated with the operation of such industrial development projects;in amounts determined to be appropriate by the authority.
- (11) Issue bonds to fund a program for financing multiple, identified or unidentified industrial development projects if the authority finds that issuance of the bonds will be of benefit to the health, safety, morals, or general welfare of the state and complies with the purposes and provisions of this chapter by promoting a substantial likelihood for:
 - (A) creating opportunities for gainful employment;
 - (B) creating business opportunities;
 - (C) educational enrichment (including cultural, intellectual, scientific, or artistic opportunities);
 - (D) the abatement, reduction, or prevention of pollution;
 - (E) the removal or treatment of any substances in materials being processed that would otherwise cause pollution when used; or
 - (F) promoting affordable and accessible child care.

The authority may by resolution approve the proposed taxable bond issue. The authority may use appropriations to create a debt service reserve fund for the purpose of allowing the authority to issue pooled bonds, either tax-exempt or taxable, for the construction or renovation of licensed child care facilities (or child care facilities that are in the process of being licensed) under the authority's industrial development project section.

(b) As each unidentified industrial development project is identified for possible funding from a program under subsection (a)(11), the requirements of sections 17(a), 17(b), 17(c), and 17(e) of this chapter shall be complied with as a condition precedent to entering into a financing agreement for the funding of the industrial

development project.

(c) Bonds issued to fund a program under this section are not in any respect a general obligation of the state, nor are they payable in any manner from revenues raised by taxation.

(d) Any resolution adopted to authorize the issuance of taxable bonds to fund a program under subsection (a)(11) may provide that the bonds are payable solely from:

(1) revenues and receipts derived from the various financing agreements; or

(2) the payments made under any other agreements to secure the obligations of the developers, users, related persons, or the authority.

(e) The obligations described in subsection (d)(2) may be secured under the agreement by the authority under the industrial development project guaranty fund or by the developers, users, or related persons.

As added by P.L.25-1987, SEC.6. Amended by P.L.11-1990, SEC.34; P.L.24-1995, SEC.14; P.L.227-1999, SEC.8; P.L.273-1999, SEC.197; P.L.14-2000, SEC.10.

IC 4-4-11-18

Certain loans; investment, purchase, or commitments by authority

Sec. 18. (a) The authority may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of, loans made for the acquisition, construction, installation, rehabilitation, or purchase of industrial development projects. Prior to investment, purchase, assignment, or commitment, the lender shall certify that the proceeds of the authority's bonds will be used to make loans to provide financing for industrial development projects, or pending the making of such loans, invested in short term obligations complying with the requirements of this chapter. The authority shall purchase loans at a purchase price equal to the outstanding principal balance, but the authority may require a discount from the principal balance or make a payment of a premium to effect a fair rate of return for the lender, as determined by the rate of return on comparable investments under market conditions existing at the time of purchase. In addition to the payment of the outstanding principal balance, the authority shall pay the accrued interest due thereon, on the date the loan is delivered against payment therefor or on another date as may be established by agreement between the authority and the selling lender. The authority shall comply with section 17(b), 17(c), and 17(d) of this chapter in connection with the multiple project program described in this section.

(b) Before exercising any of the powers authorized in this section, the authority shall require the lender to certify and agree that:

(1) the loan is, or, if the same has not been made, will be, at the time of making, in all respects a prudent investment; and

(2) the lender will make the loans and sell the same to the authority within a reasonable period of time.

(c) Before exercising any of the powers conferred by this section, the authority may:

- (1) require that the loan involved be insured by a loan insurer or be guaranteed by a loan guarantor;
- (2) require any type of security that it deems reasonable and necessary; or
- (3) authorize the reservation of funds by lenders in the amount and subject to conditions as the authority considers reasonable and necessary under this chapter.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.25-1987, SEC.7; P.L.11-1990, SEC.35.

IC 4-4-11-19

Power to borrow money and issue bonds

Sec. 19. (a) The authority shall have the power to borrow money and to issue its bonds from time to time in such principal amounts as the authority determines shall be necessary to provide sufficient funds to carry out its purposes, including:

- (1) carrying out the powers stated in this chapter, except the powers pertaining to the guaranty program, and in IC 15-7-5-16 through IC 15-7-5-20;
- (2) the payment of interest on bonds of the authority;
- (3) the establishment of reserves to secure the bonds; and
- (4) all other expenditures of the authority incident to, necessary, and convenient to carry out its purposes and powers.

(b) The authority may also issue bonds in the manner provided by IC 4-4-21 and IC 15-7-5.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.36; P.L.24-1995, SEC.15.

IC 4-4-11-20

Refunding bonds; issuance; application of proceeds; terms

Sec. 20. (a) The authority shall have the power to issue, from time to time, bonds to renew or to pay bonds, including the interest thereon, if such bonds have been issued to finance projects that constitute industrial development projects, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds and partly for any other of its corporate purposes as long as the bonds to be refunded were issued to finance projects that constitute industrial development projects. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded, or exchanged for the bonds to be refunded. With respect to any bonds issued for an industrial development project under this chapter, the cumulative terms of refunding bonds shall not exceed fifty (50) years for any industrial development project or group of industrial development projects financed at the same time. If issued to refund bonds issued under IC 36-7-12 to finance projects that constitute industrial development projects, the

cumulative terms of refunding bonds may not exceed forty (40) years.

(b) A savings to the authority or to the unit issuing the bonds to be refunded is not required for the issuance of the refunding bonds or the issuance of bonds to refund refunding bonds. Refunding bonds issued under this section are payable solely from revenues and receipts derived from:

(1) financing agreements with the users or developers of the facilities originally financed by the outstanding bonds, or related persons; or

(2) payments made under guaranty agreements by developers, users, or related persons.

The financing agreements or guaranties may be new financing agreements or guaranties or amendments of the original financing agreements or guaranties.

(c) Refunding bonds issued under this section are not in any respect a general obligation of the authority, nor are the bonds payable in any manner from revenues raised by taxation.

(d) Section 17(b) and 17(c) of this chapter does not apply to the issuance of refunding bonds under this section.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.37; P.L.24-1995, SEC.16.

IC 4-4-11-21

Bonds; liability of authority; pledges as additional security

Sec. 21. Except as may otherwise be expressly provided by the authority, every issue of its bonds shall be obligations of the authority payable solely out of any specified revenue or money of the authority, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government or any corporation, limited liability company, association, institution, or person or a pledge of any money, income, or revenue of the authority from any source.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.38; P.L.8-1993, SEC.14.

IC 4-4-11-22

Bonds; liability of state

Sec. 22. No bonds issued by the authority under this chapter shall constitute a debt, liability, or obligation of the state, or a pledge of the faith and credit of the state, but shall be payable solely as provided by section 21 of this chapter. Each bond issued under this chapter shall contain on its face a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.39.

IC 4-4-11-23

Bonds; issuance; procedure; terms

Sec. 23. The bonds shall be authorized by a resolution of the authority, shall bear the date or dates, and shall mature at a time or times as the resolution may provide, except that no bond shall mature more than fifty (50) years from the date of its issue, except as provided in section 20 of this chapter. The bonds shall be in denominations, be in the form, either coupon or registered, carry the conversion or registration privileges, be executed in the manner, be payable in the medium of payment at the place or places inside or outside Indiana, and be subject to the terms of redemption, including redemption prior to maturity, as the resolution or any trust agreement or indenture of the authority securing the bonds may provide. The bonds shall bear interest at a rate or rates that may be fixed, variable, fixed convertible to variable, variable convertible to fixed, or any combination of these rates. Variable rates shall be determined in the manner and in accordance with the provisions set forth in the resolution or the trust agreement or indenture securing the bonds. The interest on the bonds may be payable at the time or times or at the interval or intervals as may be provided in the resolution or the trust agreement or indenture securing the bonds, including the compounding and payment of interest at maturity or at any other time or times as may be specified in the resolution, trust agreement, or indenture. The bonds and their issuance shall not be subject to the provisions of any other statute concerning bonds or the issuance of bonds. Bonds of the authority may be sold by the authority at public or private sale, and at a price or prices as the authority shall determine. No action to contest the validity of any bonds issued or guarantees entered into by the authority under this chapter shall be commenced more than thirty (30) days following the adoption of the resolution approving such bonds or guarantees as provided in this chapter.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.40.

IC 4-4-11-24

Bonds; authorized provisions

Sec. 24. Any resolution authorizing the issuance of bonds or trust agreement or indenture pursuant to which the bonds are issued may contain provisions, which shall be a part of the contract or contracts with the holders of the bonds, as to the following:

- (1) Pledging all or any part of the revenue of the authority to secure the payment of the bonds, subject to agreements with bondholders as may then exist.
- (2) Pledging all or any part of the assets of the authority, including loans and obligations securing the same, to secure the payment of the bonds, subject to agreements with bondholders as may then exist.
- (3) The use and disposition of the gross income from loans owned by the authority and payment of the principal of loans

owned by the authority.

(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof.

(5) Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders must consent to, and the manner in which the consent may be given.

(8) Limitations on the amount of money to be expended by the authority for operating expenses of the authority.

(9) Vesting in a trustee or trustee property, rights, powers, and trust as the authority may determine, and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee.

(10) Defining the acts or omissions which shall constitute a default and the obligations or duties of the authority to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver. However, the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of this chapter.

(11) Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.41.

IC 4-4-11-25

Pledges

Sec. 25. Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money, or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice. The resolution or any other instrument by which a pledge is created does not need to be recorded.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.42.

IC 4-4-11-26

Bonds; purchase by authority

Sec. 26. The authority, subject to any agreements with bondholders as may then exist, shall have power out of any funds

available to purchase bonds of the authority, which shall thereupon be cancelled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price then applicable plus accrued interest to the next interest payment on the bond.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.43.

IC 4-4-11-27

Bonds; trust agreement or indenture

Sec. 27. The bonds may be secured by a trust agreement or indenture by and between the authority and a corporate trustee, which may be a bank having the power of a trust company or any trust company within or without the state. The trust agreement or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping, and application of all money related to the particular bond financing for which said trust agreement or indenture exists. The authority may provide by the trust agreement or indenture for the payment of the proceeds of the bonds and the revenue to the trustee under the trust agreement or indenture or other depository, and for the method of disbursement thereof, with safeguards and restrictions as the authority may determine. All expenses incurred in carrying out the trust agreement or indenture may be treated as a part of the operating expenses of the authority. If the bonds are secured by a trust agreement or indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.44.

IC 4-4-11-28

Bonds; negotiability

Sec. 28. Whether the bonds are in the form and character of negotiable instruments, the bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

As added by Acts 1982, P.L.16, SEC.1.

IC 4-4-11-29

Bonds; execution; manual or facsimile signatures

Sec. 29. Any bonds issued by the authority under this chapter shall be executed by the manual or facsimile, except as otherwise provided in this chapter, signatures of such officers or agents of the authority as the authority shall designate. In the event bonds are issued pursuant to a trust indenture, the manual authentication of each bond by the trustee shall be required. In the event that bonds are issued without a trust indenture or trustee, at least one (1) of the officers or agents of the authority shall manually execute each bond. In the event that any of the members or officers of the authority shall

cease to be members or officers of the authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles shall nevertheless be valid and sufficient for all purposes the same as if the members or officers had remained in office until the delivery.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.45.

IC 4-4-11-30

Personal liability for acts authorized by chapter

Sec. 30. The members of the authority, the officers and employees of the authority, any agents of the authority, and any other persons executing bonds issued under this chapter are not subject to personal liability or accountability by reason of any act authorized by this chapter, including without limitation the issuance of bonds, the failure to issue bonds, the execution of bonds, and the making of guarantees.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.24-1987, SEC.7; P.L.11-1990, SEC.46.

IC 4-4-11-31

Funds and accounts; establishment

Sec. 31. In addition to the industrial development project guaranty fund, the authority may create and establish such other funds and accounts as may be necessary or desirable for its purposes.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.47.

IC 4-4-11-32

Money; deposit; security; trust funds

Sec. 32. All money received by the authority, except as provided in this chapter, IC 4-4-21, or IC 15-7-5, shall be deposited as soon as practical in a separate account or accounts in banks or trust companies organized under the laws of this state or in national banking associations. The money in these accounts shall be paid out on checks signed by the chairman or other officers or employees of the authority as the authority shall authorize or by wire transfer or other electronic means authorized by the authority. All deposits of money shall, if required by the authority, be secured in a manner that the authority determines to be prudent, and all banks or trust companies are authorized to give security for the deposits. Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this chapter, IC 4-4-21, or IC 15-7-5 are trust funds to be held and applied solely as provided in this chapter, IC 4-4-21, or IC 15-7-5. The resolution authorizing any obligations, or trust agreement or indenture securing the same, may provide that any of the money may be temporarily invested pending the disbursement thereof, and shall provide that any officer with whom or any bank or trust company with which the money shall be deposited shall act as trustee of the money and shall hold and

apply the same for the authorized purposes of the authority, subject to regulations as this chapter, IC 4-4-21, or IC 15-7-5 and the resolution or trust agreement or indenture may provide.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.48.

IC 4-4-11-33

Money for the payment of bonds; contracts; security

Sec. 33. Notwithstanding section 32 of this chapter, the authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of any money of the authority and of any money held in trust or otherwise for the payment of bonds, and to carry out the contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the authority, and all banks and trust companies are authorized to give security for the deposits.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.49.

IC 4-4-11-34

State pledge to bondholders

Sec. 34. The state does hereby pledge to and agree with the holder of any bonds issued under this chapter that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with such holders or in any way impair the rights or remedies of such holders until the bonds, together with the interest, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.50.

IC 4-4-11-35

Payment of expenses and power to incur indebtedness; limitations

Sec. 35. All expenses incurred by the authority in carrying out this chapter, IC 4-4-21, or IC 15-7-5 shall be payable solely from funds provided under this chapter, IC 4-4-21, or IC 15-7-5 and nothing in this chapter shall be construed to authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of it.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.51.

IC 4-4-11-36

Repealed

(Repealed by P.L.1-1991, SEC.6.)

IC 4-4-11-36.1

Property; tax exemption

Sec. 36.1. (a) Except as provided in subsections (b) through (c), all property, both tangible and intangible, acquired or held by the authority under this chapter, IC 4-4-21, or IC 15-7-5 is declared to be public property used for public and governmental purposes, and all such property and income therefrom shall at all times be exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state, except for the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1.

(b) Property owned by the authority and leased to a person for an industrial development project is not public property. The property and the industrial development project are subject to all taxes of the state or any county, city, or other political subdivision of the state in the same manner and subject to the same exemptions as are applicable to all persons.

(c) Any industrial development project financed by a loan under the authority of this chapter shall not be considered public property and shall not be exempt from any taxes of this state, or any county, city, or other political subdivision thereof, except for pollution control equipment.

(d) An agricultural enterprise or rural development project financed by a loan under the authority of this chapter or IC 15-7-5 shall not be considered public property and shall not be exempt from Indiana taxes or any county, city, or other political subdivision of the state.

(e) This section does not provide a tax exemption for a financial institution that receives a guaranteed participating loan or an exporter that receives an eligible export loan or performance bond guarantee under this chapter or IC 4-4-21.

As added by P.L.1-1991, SEC.7. Amended by P.L.254-1997(ss), SEC.1.

IC 4-4-11-36.5

Bonds; tax exemption

Sec. 36.5. Bonds issued under this chapter and:

- (1) proceeds received from their sale by a holder, to the extent of the holder's costs of acquisition;
- (2) proceeds received on their redemption before maturity;
- (3) proceeds received at their maturity; and
- (4) interest received on them;

are exempt from state taxes as provided by IC 6-8-5.

As added by P.L.25-1987, SEC.8.

IC 4-4-11-37

Bonds; legal investments; securities

Sec. 37. The bonds issued by and under the authority of this chapter by the authority are declared to be legal investments in which all public officers or public bodies of this state, its political

subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of this state, may invest funds, including capital, in their control or belonging to them. The bonds are also made securities which may be deposited with and received by all public officers and bodies of this state or any agency or political subdivisions of this state and all municipalities and public commissions for any purpose for which the deposit of bonds or other obligations of this state is now or may be later authorized by law.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.53.

IC 4-4-11-38

Annual report

Sec. 38. The authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor. Each member of the general assembly shall receive a copy of such report by making a request for it to the chairman of the authority. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.54.

IC 4-4-11-39

Application of state laws

Sec. 39. The issuance of bonds and the promulgation of rules under this chapter, IC 4-4-21, or IC 15-7-5 need not comply with the requirements of any other state laws applicable thereto. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in this chapter. All agricultural enterprises, rural development projects, and industrial development projects for which funds are advanced, loaned, or otherwise provided by the authority under this chapter or IC 15-7-5 must be in compliance with any land use, zoning, subdivision, and other laws of this state applicable to the land upon which the agricultural enterprise, rural development project, or industrial development project is located or is to be constructed, but a failure to comply with these laws does not invalidate any bonds issued to finance an agricultural enterprise, rural development project, or industrial development project.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.55.

IC 4-4-11-40

Income and assets of authority; reversion

Sec. 40. All income and assets of the authority are for its own use without appropriation, but shall revert to the state general fund if the authority by resolution transfers money to the state general fund or if the authority is dissolved.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.56.

IC 4-4-11-41**Bonds, guarantees, and securities; exemption from securities registration laws**

Sec. 41. Any bonds issued by the authority pursuant to this chapter, any guarantees by the authority pursuant to the guaranty program, and any other securities issued in connection with a financing under this chapter shall be exempt from the registration and other requirements of IC 23-2-1 and any other securities registration laws.

As added by Acts 1982, P.L.16, SEC.1. Amended by P.L.11-1990, SEC.57.

IC 4-4-11-42**Repealed**

(Repealed by P.L.11-1990, SEC.135.)

IC 4-4-11-43**Legislative findings; clean coal technology program; financing of clean coal technology projects; procedure; contributions from beneficiaries**

Sec. 43. (a) In addition to the findings of fact set forth in section 2 of this chapter, the general assembly finds that:

- (1) the federal Clean Air Act, as implemented, will have a harmful and injurious effect on the state's coal industry, resulting in critical and chronic conditions of unemployment affecting the unemployed workers and their families and communities and, ultimately, the state;
- (2) there exists clean coal technology that, if successfully implemented, will increase the fortunes of the coal industry and, as a result, workers in the industry and their families and communities and, ultimately, the state; and
- (3) implementation of clean coal technology consistent with the findings of fact set forth in subdivisions (1) and (2) serves the public purposes of public health, welfare, safety, and economic development.

(b) For purposes of this section, "political subdivision" has the meaning set forth in IC 36-1-2-13.

(c) There is created within the authority a clean coal technology program. The authority shall manage the clean coal technology program with the advice of the department of commerce.

(d) Subject to subsection (i), the authority is authorized and directed to issue revenue bonds, or to guarantee its revenue bonds, in

an amount not to exceed forty million dollars (\$40,000,000), under this chapter to finance clean coal technology projects, including all costs related to the financing. Subject to subsection (i), as an alternative to issuing revenue bonds, and notwithstanding any other law, the authority may guarantee revenue bonds issued by another body politic and corporate of the state or a political subdivision for these purposes. Revenue bonds or guarantees are payable solely from or secured by:

- (1) revenues from the clean coal technology projects;
- (2) contributions made by and to the authority for the clean coal technology program;
- (3) appropriations made by the general assembly; and
- (4) appropriations or pledges made by other bodies corporate and politic of the state and political subdivisions.

(e) Notwithstanding any other law or provisions of this chapter, revenue bonds may be issued or guaranteed under this section by resolution of the authority. Subject to subsection (i), no other procedures or findings, including procedures or findings required under this chapter for revenue bonds or guarantees, are required to be followed. The terms of the revenue bonds or the guarantee must be set forth in the resolution in the discretion of the authority.

(f) Bodies corporate and politic of the state and political subdivisions, including cities, towns, and counties, may make appropriations to the clean coal technology program and clean coal technology projects and, notwithstanding any other law, may pledge county option and economic development income tax revenues to the clean coal technology program or one (1) or more clean coal technology projects or to revenue bonds issued or guaranteed for the program or projects, whether by the authority or otherwise.

(g) Revenue bonds and guarantees of the authority under this section do not constitute debt of the state and the general assembly shall not be obligated to make appropriations to the authority for such purposes.

(h) In addition to other powers granted to the authority or a political subdivision under this chapter, the authority or a political subdivision may lease clean coal technology projects under this section from a lessor corporation or authority and sublease the project to any entity. Bonds issued by any lessor corporation or authority shall be considered revenue bonds of a body politic and corporate of the state or a political subdivision for all purposes of this section.

(i) The authority may not issue revenue bonds to finance a clean coal technology project, guarantee revenue bonds issued by another body corporate and politic of Indiana or a political subdivision to finance a clean coal technology project, or enter into a lease in connection with a clean coal technology project unless and until:

- (1) the state department of commerce evaluates in writing the technical merits and feasibility of the clean coal technology project and the department presents the evaluation with a recommendation to proceed to the budget committee for review;

(2) the authority, in cooperation with the budget agency, evaluates the financial merits and feasibility of the clean coal technology project (including a plan of finance for the project and appropriate assurances that the project will be constructed as contemplated) and the authority presents the evaluation with a recommendation to proceed to the budget committee for review;

(3) the budget committee completes the reviews described in this subsection and makes a recommendation to proceed to the state board of finance; and

(4) the board of finance approves the undertaking of the clean coal technology project and plan of finance.

(j) In evaluating the technical merits and feasibility of the clean coal technology project, the department of commerce may rely upon the written testimony of outside experts retained for this purpose.

(k) The plan of finance described in subsection (i) must indicate whether, in the authority's opinion, state appropriations will be needed to support the project and if so, the anticipated times and amounts of the appropriations.

(l) In creating the clean coal technology program and in authorizing the financing of clean coal technology projects, the general assembly expects that the plan of finance for each project will take into account revenues from the project and contributions from the beneficiaries of the program. For purposes of this section, "beneficiaries" means corporate and individual sponsors and proponents of projects, the coal industry and coal users, and employees of the coal industry and coal users, and political subdivisions whose economies are dependent in whole or in part on the coal industry. Contributions may be in cash, in kind, or in any combination of in cash and in kind, and may include real and personal property and interests in real and personal property and in technology, patents, licenses, franchises, marketing agreements, and shares and other interests in any of the foregoing. In evaluating and reviewing projects and plans of finance under this section, the authority, the department of commerce, the budget agency, the budget committee, and the state board of finance shall be guided by the general assembly's expectation as to contributions from the beneficiaries of the program as described in this subsection. However, failure of any particular beneficiary to contribute to a project shall not in itself disqualify a project.

(m) This section only applies to the clean coal technology program and clean coal technology projects and not to any other programs or projects undertaken by the authority.

As added by P.L.28-1995, SEC.1.